IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 166 of 2002

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO LTD.

Versus

HEIRS & LEGAL REP.OF RAJENDRA YADAV

Appearance:

MR DEEPAK M SHAH for Appellant

MR KAMLESH B MEHTA for Respondents No. 1/1 to 1/5

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 27/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted. Mr. Kamlesh Mehta appears for respondent nos.1/1 to 1/5 - original claimants and waives service of notice in the appeal.

2. On a joint request of learned counsel, this appeal is taken up for final hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988, at the instance of the Insurance Company, challenging the judgement and award passed by the Motor Accident Claims Tribunal, Bhuj, under section 163-A of the said Act.

4. It is pertinent to note that the said award has been passed by order below Exh.6 in Claim Petition under section 163-A, being Motor accident Claim Petition No.16/2000, while the main claim under section 166 is yet pending.

5. Learned counsel for the appellant contends that the Tribunal has erred in law in treating the said Claim Petition under section 163-A as a claim of an interim nature, and has dealt with it in a manner similar to a claim under section 140 of the said Act. It was contended that on account of this approach on the part of the Tribunal, the appellant Insurance Company had no opportunity of leading appropriate evidence and/or meeting the contentions of the original claimants in these proceedings under section 163-A. According to the learned counsel for the appellant, the law as laid down by the Supreme Court does not permit the claimants to pursue a claim under section 163-A of the Act, whether by way of an interim application or even by way of a final decision, as long as the main claim under section 166 of the said Act is pending adjudication. In other words, learned counsel for the appellant contends that the claims filed under section 163-A and section 166 of the said Act are in the nature of alternative remedies, and only one of such remedies can be pursued, whereas the two remedies cannot be pursued simultaneously or in succession. We are obliged to accept this contention on the part of the learned counsel for the appellant in view of the clear decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala and others, reported in JT 2001(4) SC 477. It is, therefore, obvious that on the facts of the case, since the main claim petition under section 166 of the Act is pending, the Tribunal had no jurisdiction either to entertain or to decide a claim under section 163-A of the

said Act. In the premises aforesaid, the impugned award under section 163-A is required to be quashed and set aside. We hold and direct accordingly.

6. In view of the fact that the main claim petition under section 166 is pending, and in view of the fact that the appellant Insurance Company has not paid the claimants and/or made any deposit in respect of the amount awarded under the impugned award, it shall be open to the respondent nos.1/1 to 1/5 - original claimants to proceed with the main claim petition under section 166 and to obtain an adjudication thereon on merits in accordance with law. It is also clarified that it shall be open to the claimants to prefer an application under section 140 of the said Act.

7. This appeal is, therefore, allowed to the aforesaid extent with no order as to costs. Decree accordingly.

8. It requires to be noted that on the facts and circumstances noted hereinabove and in view of the directions consequently issued, it would be appropriate for the Tribunal to expedite the hearing of the main claim petition under section 166 of the said Act, and to dispose of the same as early as possible in consonance with the date of its filing and the workload before the Tribunal.

9. Direct service permitted.

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